No. 83-916

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ALLAN WAYNE MORTON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

Page

Statutes and regulation—Continued:

Miscellaneous:

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1. The persistent theme of respondent's brief, beginning with his "correction of the question presented," is to claim that the Air Force "knew" at the time of the garnishment that the Alabama judgment was "void" (Resp. Br. i, 1, 4, 15, 16, 19, 20, 22, 27, 33, 62). This is a revealing mischaracterization of the case,[1] because it demonstrates the fallacy at

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[1]Respondent cites the trial judge's opinion (Pet. App. 66a) for the proposition that "[t]he Air Force also knew all of this prior to the taking of Col. Morton's pay" (Resp. Br. 19). The opinion, however, merely states that respondent "took the position before the Finance Office" that the garnishment writ was invalid for various reasons (Pet. App. 66a). We agree that the Air Force was on notice that respondent *believed* the judgment was void; that is a far cry from "know[ing]" it was void.

Indeed, a letter from James R. Russell, who was assigned to handle respondent's case, is quoted by respondent and reprinted at Resp. Br. App. 5a-6a. It shows that Russell "knew" — or at least thought he knew — that respondent was a domiciliary of Alabama at the time of service

the heart of respondent's position: he expects government disbursing agents to be able to second-guess state court judgments reasonably and reliably. Respondent assures us it is a simple process to determine personal jurisdiction; all that is needed is to require the garnishor's attorney to submit "two additional authenticated sheets of paper" (Resp. Br. 66). But if this case is typical (and we have no reason to doubt it), the question of personal jurisdiction can involve a bewildering array of murky factual and legal questions. See note 1, *supra*. Even blessed with a fuller factual record than that available to the Air Force, the Alabama courts decided the jurisdictional question one way and the court of appeals (by a 2-1 vote) decided the question the other.

A government disbursing officer lacks both the factfinding and the legal capacity to resolve issues of this sort, and we can see no reason why he should be expected to do so. By the time a garnishment writ is served on the government, a

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of the writ, and that respondent's counsel had advised respondent as late as August 1976 that he should change his domicile to Alaska. It also shows that Russell "knew" that the return receipt for service of process in the divorce action bore respondent's signature and was duly returned to the court. *Id.* at 6a. And, after receiving advice from the United States Attorney in Alabama, Russell "knew" that service of process by certified mail was sufficient under Alabama law — the only issue that seemed to be in doubt. Resp. Br. App. 7a. To these pieces of information could be added the facts that respondent paid personal income taxes in Alabama in 1973 and 1974 (Pet. App. 92a-93a) and that he registered an automobile in Alabama (*id.* at 93a).

The point of this is not that respondent is distorting the facts; he can cite equally persuasive "facts" to show that he was not domiciled in Alabama, subject to its jurisdiction, or duly served. See Resp. Br. 18-19. The point is that questions of personal jurisdiction are difficult to resolve: the facts frequently are disputed and conflicting and the legal judgments often involve close questions of law. It is fair to conclude, however, that the Air Force did not "know" that the Alabama judgment was void.

state court has already decided that it had jurisdiction to issue it. It is sound practice to allow — indeed, require — employers, including federal agencies, to honor state court writs in the absence of defects apparent on their face. The state court admittedly might have erred, but its decision provides reasonable assurance that the garnishment is lawful. It is unseemly to put the federal government in the position of deciding unilaterally whether a state court correctly decided the question of its own jurisdiction, as respondent suggests.[2] Until the state court judgment is set aside, the disbursing agents should not be expected to uncover latent defects in the legal process.

2. Several unsupported assertions of law in respondent's brief should be noted. First, citing 6 Am. Jur. 2d *Attachment and Garnishment* § 357 (1963), and *Stewart* v. *Northern Assur. Co.*, 45 W. Va. 734, 32 S.E. 218 (1898), respondent claims that a garnishee "has a duty to assert all proper defenses of its creditor of which the defendant has knowledge" (Resp. Br. 61-62). This proposition, if true, would conflict with our statement (Gov't Br. 14) that the duties of a garnishee are, at most, to notify the principal debtor of the proceeding, if he has not otherwise been notified, to answer

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[2]Respondent's approach (Resp. Br. 62-64) would avoid forcing the government to take sides in the underlying litigation only by denying the employee's spouse and children their rights under Section 659, purely on the basis of a unilateral decision by the disbursing officer that the state court erred on the question of its jurisdiction. The spouse and children would be relegated to remedies, such as the Uniform Reciprocal Enforcement of Support Act, 9 U.L.A. 643 (1979), which — whatever respondent's opinion may be (Resp. Br. 80) — have explicitly been found ineffective by Congress. See Gov't Br. 38-39. In any event, it is far more likely that the government's refusal to comply with the writ would be treated as an "answer" or "return" under state law, leading to litigation by the government against the needy spouse and children (Gov't Br. 44 & n.34) — a consequence even respondent agrees is undesirable. See Resp. Br. 63 ("The government * * * should not take sides [in the litigation] at any time.").

the summons, to state whether he owes money or property to the principal debtor and, if so, the amount, and to comply with the writ. The authorities cited by respondent do not, however, even remotely support his contrary view.[3] The cited section of Am. Jur. states only that "[t]here is authority that the garnishee *may* interpose any defense available to the principal defendant" (6 Am. Jur. 2d, *supra* § 357, at 811 (emphasis added)).[4] And *Stewart* holds — in accord with our position —that "it is clearly the duty of such garnishee, if practicable, to *notify* his creditor of the proceedings." 45 W. Va. at 738, 32 S.E. at 220 (emphasis added). *Stewart* does not require the garnishee to "assert" the defenses of his creditor, as respondent claims.

Respondent contends that Ala. Code § 6-6-461 (1977) and the 31 similar state statutes cited in our brief, which expressly protect garnishees from subsequent liability for reimbursement to the principal debtor (Gov't Br. 12-14 & n.9), "are predicated upon the fact that the court issuing the original judgment had jurisdiction of the person and the subject matter" (Resp. Br. 45; see also *id.* at 46-47). However, respondent cites no authority for this interpretation. As we pointed out (Gov't Br. 19), and respondent concedes (Resp. Br. 48), only one reported decision in one state (Illinois) has been found that would support respondent's implied exception to the unambiguous language of these statutes.

Respondent also continues to assert, without citation of authority, that a "court without jurisdiction of subject

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[3] Nor does respondent attempt to refute or distinguish the authorities cited in our opening brief.

[4] Another statement in Am. Jur. concerning the garnishee's "duty to assert all proper defenses of which he has knowledge" (*ibid.*) refers in context to the garnishee's *own* defenses, and his ability to obtain relief in equity if he subsequently attempts to challenge the garnishment order. It has no reference to a garnishee's rights vis-a-vis the principal debtor.

matter *or a party*" is not a "court of competent jurisdiction" (Resp. Br. 47-48 (emphasis added)) within the meaning of 42 U.S.C. (Supp. V) 662(e)(1).[5] But the government's opening brief showed that "competent jurisdiction" in many contexts means subject matter jurisdiction alone. Gov't Br. 26. The actual meaning can be determined only from context — and in this context, where the competence of the court must be discernible from the face of the process, it is apparent that the term refers only to subject matter jurisdiction. Gov't Br. 27-28. Respondent provides neither authority nor argument to the contrary.

3. Respondent attempts to sidestep the question of statutory construction in this case by arguing, contrary to the factual premise of the decision below, that the garnishment writ served on the Air Force in this case was not regular on its face. Apparently, this is because the statement in the judgment of divorce that respondent had been "duly served" (Pet. App. 38a) was "ambiguous" (Resp. Br. 26), or because the Air Force should have examined the return of process in the underlying divorce action — a document that is not required to be provided to the government and apparently was not provided here (see 5 C.F.R. 581.202) — to determine whether it was in accord with state law.

This Court need not review the issue of the facial regularity of the writ. The trial judge, who was called upon to resolve "whether the legal process served on the United States on behalf of Patricia Kay Morton was regular on its face" (Pet. App. 67a) found as a fact that "[t]he writ of garnishment was issued on the regular form used by the State of Alabama" (*id.* at 90a; see also *id.* at 78a). Similarly, the court of appeals found that the writ was regular on its

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[5]Respondent's arguments that the garnishment writ was not for alimony or child support (Resp. Br. 3-4, 31) and that it was not brought to enforce a "legal obligation" (*id.* at 4, 27-28, 30) are merely reformulations of this same point. See Gov't Br. 22-23 n.19.

face. The court noted that "where the process document is regular on its face" the government may rely upon it unless the government had notice of a substantial claim of jurisdictional irregularity. "That is the case here." Pet. App. 17a. In any event, respondent's attenuated argument goes well beyond the usual understanding of facial regularity. See *Calhoun* v. *United States*, 557 F.2d 401, 402 (4th Cir.), cert. denied, 434 U.S. 966 (1977); *Aetna Insurance Co.* v. *Blumenthal*, 129 Conn. 545, *553*, 29 A.2d 751, 754-755 (1943); *In re Technical Sergeant Harry E. Mathews, USAF*, File No. B-203668 (Comp. Gen. Feb. 2, 1982) (Pet. App. 108a-111a).[6]

4. Respondent's primary emphasis is on the supposed due process problems lurking in the government's straightforward interpretation of the garnishment statute. Our initial brief explained why there are no such problems (Gov't Br. 31-33). Respondent has confused due process limitations on state court personal jurisdiction with the appropriate remedy for violations. We do not question here that the Alabama decree of alimony and child support violated due process;[7] but it does not follow that the federal government, in its capacity as garnishee, a disinterested

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[6]Moreover, respondent virtually concedes the point when he states (Resp. Br. 24): "Nowhere on a writ of garnishment alone can it be determined that it was issued pursuant to legal process by a court of competent jurisdiction." The jurisdictional defect in this case, as respondent points out (Resp. Br. 66), could be discovered only upon examination of *additional* documents.

[7]In actuality, we have serious doubts that the court of appeals was correct in its holding that the Alabama court lacked personal jurisdiction. See Gov't Br. 11 n.8. We have not presented this essentially fact-bound question to this Court for review. We will therefore assume, for purposes of the argument above, that the Alabama judgment was in derogation of respondent's due process rights.

stakeholder, must be required to make respondent whole.[8] If respondent has a claim, it is against the plaintiff in the action, his former spouse. *Betts* v. *Coltes*, 467 F. Supp. 544 (D. Hawaii 1979). Respondent deliberately chose, on advice of counsel, not to defend his interests in the Alabama actions.[9] He thus "risk[ed] a default judgment" (*Insurance Corp. of Ireland, Ltd.* v. *Compagnie Des Bauxites de Guinee*, 456 U.S. 694, 706 (1982)) and has no constitutional right at this juncture to shift his losses to his employer.

For the foregoing reasons and those stated in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

REX E. LEE
Solicitor General

APRIL 1984

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[8]By notifying him of the proceeding, the government discharged its duties to respondent. See Gov't Br. 14-16, 18-19. While adequate *service of process* is central to the issue of personal jurisdiction, as respondent correctly observes (Resp. Br. 42), the duty of the garnishee is simply to give *notice*.

[9]In addition to his other procedural and substantive rights, respondent could have moved, pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 520(4), 521, 523, for a stay of the Alabama action or its execution, or to reopen the proceedings after judgment. He did not invoke these rights. If, as respondent claims (Resp. Br. 64 n.3), "the great probability is that this case would not have been necessary" had the procedures of the Act been followed, he has only himself to blame.

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